

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JUSTIN ANTHONY KUDLA,

Case No. 14-CV-2071 (PJS/JSM)

Petitioner,

v.

ORDER

TOM ROY, Department of Corrections
Commissioner,

Respondent.

Justin Anthony Kudla, pro se.

Kathleen A. Heaney, SHERBURNE COUNTY ATTORNEY'S OFFICE;
Matthew Frank and James B. Early, MINNESOTA ATTORNEY
GENERAL'S OFFICE, for respondent.

Petitioner Justin Anthony Kudla was convicted by a jury in state court of two counts of terroristic threats and two counts of domestic assault. *State v. Kudla*, No. A12-0619, 2013 WL 490720, at *1 (Minn. Ct. App. Feb. 11, 2013), *rev. denied*, (Apr. 16, 2013). After appealing his conviction in the state courts, Kudla filed this petition for federal habeas relief under 28 U.S.C. § 2254, claiming that his federal constitutional rights to a fair trial and due process were violated, first, by the admission of unfairly prejudicial evidence at trial, and second, by the trial judge's erroneous instructions to the jury.

This matter is before the Court on Kudla's objection to the October 29, 2014 Report and Recommendation (R&R) of Magistrate Judge Janie S. Mayeron.

Judge Mayeron recommends that Kudla's petition be dismissed without prejudice because his claims have not been exhausted in the state courts. The Court has conducted a de novo review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court agrees with Judge Mayeron's analysis and adopts her R&R.

Before a federal court can entertain a state prisoner's § 2254 petition, the state prisoner must exhaust all available state-court remedies by "fairly presenting" his federal claims to the highest available state court. *See Baldwin v. Reese*, 541 U.S. 27, 29 (2004). A review of Kudla's petition to the Minnesota Supreme Court makes clear that Kudla did not fairly present that court with the federal nature of his claims. His petition focused solely on state law—not once invoking federal rights, federal cases, or any provision of the United States Constitution. Although Kudla's brief to the Minnesota Court of Appeals did contain references to federal rights with respect to one of his claims, this does not satisfy the requirement that he "fairly present his claim in *each* appropriate state court (including a state supreme court with powers of discretionary review) . . ." *Id.* (emphasis added). Therefore, Kudla has not exhausted his state-court remedies, and his § 2254 petition must be dismissed.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court OVERRULES petitioner's objection [ECF No. 10] and ADOPTS the October 29, 2014 R&R [ECF No. 9]. IT IS HEREBY ORDERED THAT:

1. Petitioner's 28 U.S.C. § 2254 petition is DISMISSED WITHOUT PREJUDICE.
2. No certificate of appealability will issue.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 10, 2015

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge